

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

NORMAN ERIC SIMMONS, §  
Plaintiff, §  
§  
v. § CIVIL ACTION H-12-1512  
§  
REGENCY LEASING L.L.C., *et al.*, §  
Defendants. §

**ORDER**

Pending before the court are plaintiff Norman Eric Simmons's Motion to Set Aside the Magistrate Judge's Memorandum, Recommendation & Order (Dkt. 8) and Motion to Dismiss (Dkt. 9). Pursuant to Rule 41(a)(1), Simmons may dismiss his claim under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.* because no defendant has answered or filed a motion for summary judgment in this case. FED. R. CIV. P. 41(a)(1). Therefore, Simmons's motion to dismiss (Dkt. 9) is GRANTED and Simmons's RICO claim is DISMISSED WITHOUT PREJUDICE.

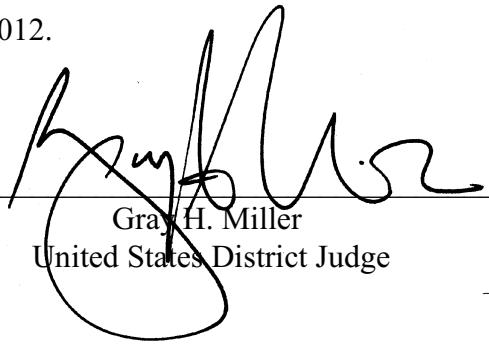
However, plaintiff's dismissal of the action does not moot the Magistrate Judge's Memorandum, Recommendation & Order (the "MR&O") issued July 26, 2012. *See* Dkt. 7. The MR&O addressed two matters. First, it recommended that this court deny Simmons's application for a temporary restraining order and injunctive relief. And second, it ordered Simmons to replead his RICO claim to satisfy Rule 11 of the Federal Rules of Civil Procedure. *Id.* The Magistrate Judge gave the plaintiff 14 days—until August 9, 2012—to object to the Memorandum, Recommendation & Order. *Id.* Plaintiff did not file objections. Instead, he untimely filed a motion to set aside the Memorandum, Recommendation & Order based on his voluntary dismissal of his RICO claim. Dkt. 8.

This court reviews a Magistrate Judge's dispositive ruling—like an application for temporary restraining order—pursuant to Rule 72(b). FED. R. CIV. P. 72(b)(3). Here the plaintiff filed no objections to the Magistrate Judge's recommendation, and his motion to set aside (Dkt. 8) made no substantive argument why this court should not adopt the recommendation of the Magistrate Judge. Therefore, upon review of the Magistrate Judge's recommendation dated July 26, 2012 (Dkt. 7) the court ADOPTS the recommendation and Simmons's application for a temporary restraining order and injunctive relief is DENIED.

This court reviews a Magistrate Judge's nondispositive order—like an order to replead in compliance with Rule 11—pursuant to Rule 72(a) and will modify or set aside the order only if it is clearly erroneous or contrary to law. Simmons did not file objections to the Magistrate's order to replead. However, even if he had, the Magistrate Judge's order that he replead to be in compliance with the Rule of Civil Procedure is not clearly erroneous or contrary to law. Accordingly, Simmons's objections are OVERRULED. However, the court agrees with Simmons that the Magistrate Judge's order is now moot since he has chosen to voluntarily dismiss his RICO claims. He is not compelled to replead a claim that he has abandoned. But, that does not mean the order should be set aside. Therefore, Simmons's motion to set aside the Magistrate Judge's Memorandum, Recommendations & Order is DENIED with the understanding that Simmons need not replead his now-dismissed RICO claim.

It is so ORDERED.

Signed at Houston, Texas on August 17, 2012.



Gray H. Miller  
United States District Judge